

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE ROBERT BLAUVELT,

Defendant-Appellant.

UNPUBLISHED

November 17, 2011

No. 300172

Oakland Circuit Court

LC No. 2007-217522-FH

Before: MURPHY, C.J., and BECKERING and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted the trial court's restitution order. We affirm.

This case involves the destruction of the home owned by Melvin and Martha Graham, in which they had lived for more than thirty years at the time. At the time of the offense, defendant's former stepson was married to the Grahams' daughter. In April 2005, defendant and the Grahams entered into an agreement under which defendant was to demolish the Grahams' house and build them a new home. At the sentencing and restitution hearings, the Grahams and defendant gave different accounts as to how and why that agreement came about, but the relevant facts are not contested. The Grahams had \$60,000 in cash, and they applied for, and apparently were approved for, a \$95,000 construction loan. The Grahams paid defendant \$6,000 to demolish the house, and the demolition was carried out. The Grahams paid defendant an additional \$38,000 toward lumber for constructing the new house. The Grahams and defendant again presented different explanations for why, but in the end, the new house was never constructed. When the Grahams finally lost hope that defendant would follow through on the construction, they consulted Howard Millar, who estimated that it would cost the Grahams \$123,000 to construct a replacement house, in addition to the money they had already lost. Mrs. Graham explained that there was no way they could afford to do so.

Defendant pled guilty to one count of larceny by conversion of \$1,000 or more but less than \$20,000, MCL 750.362, MCL 750.356(3)(a), and one count of performing an occupation without a license, MCL 339.601(4). The Grahams obtained a civil judgment against defendant, upon which they were able to collect \$1,674. A lumber company returned \$15,500 to the Grahams. The trial court ordered that defendant pay restitution in the amount of \$143,826.00, reflecting the estimated cost of a new house in addition to the outstanding amount of money the Grahams had paid to defendant toward construction. The \$6,000 that the Grahams paid for the

demolition was not included. Defendant argues that the trial court should not have ordered him to pay for the cost of rebuilding the house. We disagree.

An order of restitution is reviewed for an abuse of discretion. *People v Dimoski*, 286 Mich App 474, 476; 780 NW2d 896 (2009). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). To the extent that an issue of statutory construction is involved, the standard of review is de novo. *Dimoski*, 286 Mich App at 476. We review the trial court's factual findings for clear error. MCR 2.613(C); *People v Gubachy*, 272 Mich App 706, 708; 728 NW2d 891 (2006). "Clear error exists when the reviewing court is left with the definite and firm conviction that a mistake has been made." *People v Kurylczyk*, 443 Mich 289, 303; 505 NW2d 528 (1993).

In Michigan, victims of crimes, and felonies in particular, have a right both by statute and pursuant to our Constitution to restitution. Const 1963, art 1, § 24; MCL 780.766(2); MCL 769.1a(2). Victims include any individual who suffers harm as a result of the commission of the crime. MCL 780.752(1)(m)(i). The purpose of these restitution provisions is "to make victims of a crime as whole as they can fairly be made and to leave the determination of how best to do so to the trial court's discretion on the basis of the evidence presented and subject to the prosecuting attorney's burden of proving losses attributable to defendant's crime-related acts." *Gubachy*, 272 Mich App at 713. The proper focus is on the ultimate loss to the victim as shown by the evidence, not on what the defendant took. *Id.* If there is a dispute regarding the amount of restitution, the prosecution has the burden of demonstrating the amount of loss by a preponderance of the evidence. MCL 780.767(4).

Defendant points out that the demolition of the house was pursuant to his contract with the Grahams. We agree that the demolition of the house, standing alone, was not one of defendant's criminal acts. However, the demolition does not stand alone. The demolition of the house was an inextricable part of an overall transaction that was supposed to have resulted in the Grahams having a new house, but, because of defendant's criminal acts, instead resulted in the Grahams having no house and no way to replace it. As noted, defendant was not ordered to repay the cost of the demolition. But there was evidence from which the trial court could have determined that defendant's criminal acts caused the Grahams to lose their house. The trial court did not clearly err in so concluding. Defendant also argues that the \$123,000 estimate is too high, and there is no evidence that the Grahams obtained any other estimates. However, the trial court was free to reject defendant's testimony about the cost of constructing the house, and this Court defers to the trial court's superior opportunity to judge witnesses' credibility. *People v Cyr*, 113 Mich App 213, 222; 317 NW2d 857 (1982). The trial court accepted Mrs. Graham's testimony, and her testimony establishes the loss and defendant's responsibility for it.

The trial court did not clearly err by implicitly finding that defendant's crime caused the victims to be without a home, and thus did not abuse its discretion by including the cost to replace the home in its restitution order.

Affirmed.

/s/ William B. Murphy
/s/ Jane M. Beckering
/s/ Amy Ronayne Krause